

**RECEIVED  
CENTRAL FAX CENTER****JUL 10 2006**

**Appl. No. 09/915,082  
Amdt. dated July 10, 2006  
Reply to Office action of April 10, 2006**

**REMARKS/ARGUMENTS**

Applicants received the Office action dated April 10, 2006, in which the Examiner: 1) rejected claims 1-3 and 8 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, as being indefinite; and 2) rejected claims 1-3, 8, 9, 11-13, 21, 23-30, 33 and 35-42 under 35 U.S.C. § 103(a) as being unpatentable over Fung (U.S. Pat. No. 6,859,882, hereinafter "Fung"). With this Response, Applicants amend claims 1, 9, and 30. Based on the arguments and amendments contained herein, Applicants believe this case to be in condition for allowance.

Claim 1 requires multiple groups of computers and deploying a less efficiently operating computer from one group to another based on transactions on the external network. As amended, each of the claimed groups "performs transactions received from said external network."

The Examiner has taken the position that Fung teaches multiple "groups" of computers. The Examiner's position is that one group comprises computers operating in a "normal power state" and another group comprises computers that have been transitioned to a "power saved state." The reference to groups of computers in claim 1 has been amended to clarify that each group of computers performs transactions received from the network. Per the Examiner's reading of Fung, the group that comprises computers in the power saved state would clearly not be able to perform transactions received from the network. At least for this reason, claim 1 and all claims dependent thereon are allowable.

The same or similar amendments were made to claims 9 and 30, and thus claims 9 and 30 and associated dependent claims are also allowable.

The word "functional" was added in several places in claim 30 to ensure proper antecedent basis.

Claim 21 requires a user being able to specify an upper limit for power usage by the data center and the master PMA maximizing a performance of the data center for the specified power limit. The Examiner contends that this limitation is met in col. 45, lines 43-51, of Fung. This passage describes Intel's SpeedStep™ technology which provides a reduced state in which CPU frequency and voltage are reduced. The SpeedStep™ technology, however, is operable

**Appl. No. 09/915,082**  
**Amdt. dated July 10, 2006**  
**Reply to Office action of April 10, 2006**

only within a single computer. Claim 1 requires specifying an upper limit for power usage "by the data center." Applicants do not find this limitation in Fung. At least for this reason, claim 1 and its dependent claims are allowable.

Claim 26 requires a user being able to specify a performance criterion for the data center. Again, the Examiner turned to the brief description of Intel's SpeedStep™ in col. 45, lines 43-51, of Fung. Fung does not disclose specifying a performance criterion for a data center. At least for this reason, claim 26 and its dependent claims are allowable.

Applicants also traverse the rejection of claim 26. Claim 26 requires a user to be able to "specify a performance criterion for said data center." The user-specified "performance criterion" is used by the master PMA as claimed. Fung does not teach or suggest permitting a user to specify a performance criterion for the data center and adjusting the power consumption state of a computer based on the specified performance. Further, the Office action failed to even acknowledge the existence of this claim language and thus the Examiner has not made out a prima facie case of obviousness. For either or both of these reasons, Applicants contend that claim 26 and all claims dependent thereon are allowable over Fung.

Claim 35 requires that power state of at least one computer is changed based on a "protocol." The claimed protocol includes "time sequences which specify permitted computer system power usage." The Examiner turned to col. 34, lines 11-22, of Fung for this limitation. That passage is as follows:

For example, the traffic or load requirements placed on servers during Christmas Holiday season may be many times or even one or more orders of magnitude as compared to other times of the year. News, stock market, and other organizations may have analogous traffic fluctuations during a single day. Unless such e-commerce entities are able to satisfy the inquiries of their customers with tolerable quality of service (QOS), such customers may never come back to the site. Therefore, day-to-day, week-to-week, and month-to-month traffic loading can vary over a wide range. For one typical ISP, the average load is about twenty-percent (20%) of the maximum load.

**Appl. No. 09/915,082  
Amdt. dated July 10, 2006  
Reply to Office action of April 10, 2006**

The quoted passage simply recognizes that network traffic and load requirements may be cyclical. This passage does not suggest that such temporally cyclical network traffic be taken into account during load balancing decisions. Applicants do not find such a suggestion elsewhere in Fung. Thus, Fung does not disclose changing a power state based on a protocol that includes "time sequences which specify permitted computer system power usage." For at least this reason, Applicants contend that claim 35 and all claims dependent thereon are allowable over Fung.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,



Jonathan M. Harris  
PTO Reg. No. 44,144  
CONLEY ROSE, P.C.  
(713) 238-8000 (Phone)  
(713) 238-8008 (Fax)  
ATTORNEY FOR APPLICANTS

HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
Legal Dept., M/S 35  
P.O. Box 272400  
Fort Collins, CO 80527-2400